

FILED  
SEP 15 2006

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

  
CLERK

\*\*\*\*\*  
UNITED STATES OF AMERICA, \* CR 05-30121  
\*  
Plaintiff, \*  
\*  
-VS- \* ORDER AND OPINION  
\*  
PASCAL L. TWO ELK, \*  
\*  
Defendant. \*  
\*\*\*\*\*

Defendant filed a motion to suppress (Doc. 14) with a supporting memorandum (Doc. 15). U.S. Magistrate Judge Moreno conducted an evidentiary hearing on June 14, 2006, and filed and served a report and recommendation for disposition of the motion (Doc. 44). The Court has conducted a *de novo* review of the transcript of the hearing (Doc. 43), the transcript of the findings made on the record by the magistrate (Doc. 46), and all the files and records herein. I have read all exhibits from the hearing. I have listened to the so-called summary tape (exhibit 4). Defendant has filed objections (Doc. 47) to the recommendation of the magistrate and the objections have been considered.

The motion as to the statements is totally without merit and is probably frivolous.

The objections should be overruled, the motion denied, and the report and recommendation accepted.


Now, therefore,

IT IS ORDERED, as follows:

- 1) The motion for suppression of evidence in the nature of statements (Doc. 14) is hereby denied.
- 2) The objections (Doc. 47) of the defendant should be and are hereby overruled and the report and recommendation (Doc. 44) as well as the findings made by the magistrate (Doc. 46) should be and are hereby adopted.

Dated this 15<sup>th</sup> day of September, 2006.

BY THE COURT:

  
CHARLES B. KORNMANN  
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY:   
DEPUTY

(SEAL)